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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PETER ROZSA,

Defendant and Appellant.

H045520

(Santa Clara County  
Super. Ct. No. C1649955)

Defendant Peter Rozsa appeals from a judgment entered after he pleaded no contest to four counts of forcible lewd conduct on a child under the age of 14 (Pen. Code, § 288, subd. (b)(1), counts 1-4)<sup>1</sup> and one count of possession of matter depicting sexual conduct of person under the age of 18, including at least 600 images, 10 or more of which involve a minor under the age of 12 (§ 311.11, subd. (c)(1), count 11). Defendant contends, and the Attorney General concedes, that the trial court failed to dismiss counts 5 through 10 and 12 through 17 pursuant to the parties' negotiated plea agreement. We will affirm the judgment as modified.

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<sup>1</sup> All further statutory references are to the Penal Code.

## **I. Statement of Facts**

In September 2015, the victim reported that defendant, who was her stepfather, sexually assaulted her for several years when she was a child. He also took pornographic photographs of her. During a pretext call with the victim, defendant admitted the acts that had been alleged by her. During a search of defendant's computers, police found child pornography, including photographs of the victim.

## **II. Statement of the Case**

Defendant was charged by an amended information with 10 counts of forcible lewd conduct on a child under the age of 14 (§ 288, subd. (b)(1), counts 1-10), one count of possession of matter depicting sexual conduct of a person under the age of 18, including at least 600 images, 10 or more of which involve a minor under the age of 12 (§ 311.11, subd. (c)(1), count 11), and six counts of possession of matter depicting a person under the age of 18 engaging in or simulating sexual conduct (§ 311.11, subd. (a), counts 12-17).

In July 2017, defendant signed and filed a written advisement of rights, waiver, and plea form. He agreed to enter a plea of no contest to counts 1 through 4 and 11 in exchange for a prison term of 37 years, which was the maximum sentence for these counts. The form does not mention the remaining 12 counts. At the change of plea hearing, the trial court stated to counsel, "You asked me to calendar this for dispo." Defense counsel responded, "We do have a resolution in this matter." Defendant pleaded no contest to counts 1 through 4 and 11. There was no mention at this hearing of the counts to which defendant had not entered a plea. The clerk's minutes, however, indicate that counts 5 through 10 and 12 through 17 would be dismissed pursuant to the plea agreement. The probation officer's report, which the trial court signed, also states that these counts would be submitted for dismissal.

In December 2017, the trial court imposed the agreed-upon sentence of 37 years as well as fines, fees, and penalty assessments. No mention was made of counts 5 through 10 and 12 through 17. But the clerk's minutes state that these counts were dismissed.

### **III. Discussion**

Defendant contends, and the Attorney General agrees, that an implied term of the negotiated plea agreement was that the trial court would dismiss counts 5 through 10 and 12 through 17 at the sentencing hearing.

“A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles. [Citations.] ‘The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.] . . .’ [Citation.] ‘The mutual intention to which the courts give effect is determined by objective manifestations of the parties’ intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties. [Citations.]’ [Citations.]” (*People v. Shelton* (2006) 37 Cal.4th 759, 767.)

Here, the terms of the plea agreement were that defendant would plead no contest to counts 1 through 4 and 11 in exchange for a sentence of 37 years. The agreement did not state that he would enter a plea to the remaining counts. At the change of plea hearing, the trial court referred to the “dispo” of the case and counsel stated that there had been a “resolution . . . .” This language indicated that the trial court and the parties understood that they intended to reach a conclusion as to the entire case. The probation report, which was signed by the trial court, stated that the remaining counts would be submitted for dismissal at the sentencing hearing. Neither party objected to the probation report. There was no indication by the parties or the trial court at either the change of

plea or the sentencing hearings that defendant would remain potentially liable on the remaining counts. Thus, the record establishes that the mutual intent of the parties was that the trial court would dismiss counts 5 through 10 and 12 through 17 at the sentencing hearing.

“The usual remedies for violation of a plea bargain are to allow defendant to withdraw the plea and go to trial on the original charges, or to specifically enforce the plea bargain. Courts find withdrawal of the plea to be the appropriate remedy when specifically enforcing the bargain would have limited the judge’s sentencing discretion in light of the development of additional information or changed circumstances between acceptance of the plea and sentencing. Specific enforcement is appropriate when it will implement the reasonable expectations of the parties without binding the trial judge to a disposition that he or she considers unsuitable under all the circumstances.” (*People v. Mancheno* (1982) 32 Cal.3d 855, 860-861.) Here, the parties agree that specific enforcement of the negotiated plea agreement is appropriate.

#### **IV. Disposition**

The judgment is modified to dismiss counts 5 through 10 and 12 through 17. As modified, the judgment is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Grover, J.

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